

FINDING OF EMERGENCY

The Secretary of the Department of Food and Agriculture finds that an emergency exists, and that the foregoing regulation is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

Specific Facts Showing the Need for Immediate Action

Peach fruit fly, *Bactrocera zonata*, is an insect pest which attacks the fruit of various plants including apple, peach, pear, tomato and citrus. The female punctures host fruit to lay eggs which develop into larvae. The punctures admit decay organisms that may cause tissue breakdown. Larval feeding causes breakdown of fruit tissue. Fruits with egg punctures and larval feeding are generally unfit for human consumption. Pupae may be found in fruit, but normally are found in soil.

Adult peach fruit flies have recently been trapped in the county of Fresno. On May 15, 2006, an adult male peach fruit fly was taken from a trap in the Fresno area of Fresno County. On May 17, 2006, another adult male peach fruit fly was taken from a trap in the Fresno area. The multiple finds of the fly meet the State's and national and international standards that are indicative of an incipient infestation of the fly in the Fresno area of Fresno County.

The peach fruit fly is a methyl eugenol attracted fruit attracted fruit fly. The Department's action plan for these types of fruit flies requires an eradication response if two adult flies are detected within three miles of each other and within a time period equal to one life cycle of the fly. The United States Department of Agriculture's Animal and Plant Health Inspection Service also accepts this standard as the trigger for an eradication response. The Food and Agriculture Organization of the United Nations has a similar international standard established.

If the fly were allowed to spread and become established in host fruit production areas, California's agricultural industry would suffer losses due to decreased production of marketable fruit, increased pesticide use, and loss of markets if other states or countries enacted quarantines against California products.

The entire county of Fresno is proposed as an eradication area because it is the political division which provides the most workable eradication area boundary for exterminating an established peach fruit fly infestation. Fruit which may have already been moved from the infested area to another portion of the county and flies which may have already spread naturally from the infested area may have already resulted in small infestations outside the current known infested area. To enable rapid treatment of these small infestations without frequent amendment of the regulation, the entire county should be established as an eradication area.

The peach fruit fly has the capability of causing significant irreparable harm to California's agricultural industry and some possible adverse environmental impacts. While the Department's compliance with the Administrative Procedure Act and the California Environmental Quality Act (CEQA) are separate actions, they can be interrelated. Although adoption of specific regulatory authority can be the beginning of a project and therefore covered by CEQA, this is a ministerial action for an emergency and an action also for the protection of natural resources and the environment by a regulatory agency and is therefore exempt from the requirements of the CEQA statutes, under PRC Section 21080, and under Sections 15268, 15307 and 15308 of the CEQA Guidelines.

The immediate implementation of this proposed regulatory action is necessary to prevent the USDA, APHIS from considering the entire state as infested with peach fruit fly, rather than just the current area of Fresno County. If this were to occur, there would likely be additional detrimental quarantine requirements directed against California host commodities by the USDA, APHIS and our international trade partners.

These facts and circumstances clearly indicate that the spread of oak mortality disease presents a clear and imminent danger to property and, therefore, constitutes an emergency. The Department is therefore compelled to take immediate action to mitigate the damage to property and preserve the general welfare.

The effect of this regulation will be to provide authority for the State to perform control and eradication activities against *Bactrocera zonata* in Fresno County. To prevent spread of the fly to noninfested areas to protect California's agricultural industry, it is necessary to

immediately begin treatment activities against the fly. Therefore, it is necessary to amend this regulation as an emergency action.

Authority and Reference Citations

Authority: Sections 407 and 5322, Food and Agricultural Code.

Reference: Sections 407, 5322, 5761, 5762 and 5763, Food and Agricultural Code.

Informative Digest

Existing law provides that the Secretary is obligated to investigate the existence of any pest that is not generally distributed within this state and determine the probability of its spread, and the feasibility of its control or eradication (Food and Agricultural Code Section 5321).

Existing law also obligates the Department of Food and Agriculture to protect the agricultural industry of California and prevent the spread of injurious pests, and that the Secretary may establish, maintain, and enforce eradication regulations as he deems necessary to circumscribe and exterminate or prevent the spread of pests (Food and Agricultural Code, Sections 401, 403, 407 and 5322). The eradication regulations may proclaim any portion of the State as an eradication area and set forth the boundaries, the pest, and the means and methods which may be used in the eradication of said pest (Food and Agricultural Code, Section 5761).

Section 3591.12, Peach Fruit Fly Eradication Area.

This emergency amendment of Section 3591.12(a) will establish Fresno County as an eradication area for *Bactrocera zonata*, peach fruit fly. The effect of the amendment is to provide authority for the State to perform control and eradication activities against peach fruit fly in Fresno County to prevent spread of the fly to noninfested areas to protect California's agricultural industry.

Mandate on Local Agencies or School Districts

The Department of Food and Agriculture has determined that this regulation does not impose a mandate on local agencies or school districts and no reimbursement is required under Section 17561 of the Government Code.

Cost Estimate

The Department also has determined that the regulation will involve no costs or savings to any state agency, no nondiscretionary costs or savings to local agencies or school districts, no reimbursable costs or savings to local agencies or school districts under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, and no costs or savings in federal funding to the State.